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Attorneys for RABAB ABDULHADI

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

JACOB MANDEL, CHARLES VOLK,) Case No.: 3:17-CV-03511-WHO
 LIAM KERN, SHACHAR BEN-DAVID,)
 MICHAELA GERSHON, MASHA) **DEFENDANT, RABAB**
 MERKULOVA, and STEPHANIE) **ABDULHADI'S MOTION FOR**
 ROSEKIND,) **SANCTIONS PURSUANT TO 28**

Plaintiffs,) **U.S.C. § 1927 AND THE COURT'S**
 v.) **"INHERENT AUTHORITY";**

BOARD OF TRUSTEES of the) **DECLARATIONS OF MARK**
 CALIFORNIA STATE UNIVERSITY,) **KLEIMAN, DAN SIEGEL AND**
 SAN FRANCISCO STATE UNIVERSITY,) **COLLEEN FLYNN IN SUPPORT**
 RABAB ABDULHADI,) **THEREOF**

in her individual capacity, and LESLIE)
 WONG, MARY ANN BEGLEY, LUOLUO) Date: May 29, 2019
 HONG, LAWRENCE BIRELLO,) Time: 2:00 p.m.
 REGINALD PARSON, OSVALDO DEL) Location: Courtroom 2, 17th Floor
 VALLE, KENNETH MONTEIRO, BIRAN) Judge: William H. Orrick
 STUART, and MARK JARAMILA, in their) Original Action Filed: June 19, 2017
 official and individual capacities,) Judgment Entered: October 29, 2018
 Defendants.) Appeal Dismissed: March 29, 2019
) Remand to District Court: April 8, 2019
)

**DEFENDANT, RABAB ABDULHADI'S MOTION FOR SANCTIONS PURSUANT TO 28 U.S.C. § 1927
 AND THE COURT'S "INHERENT AUTHORITY"; DECLARATIONS OF MARK KLEIMAN,
 DAN SIEGEL AND COLLEEN FLYNN IN SUPPORT**

NOTICE OF MOTION

PLEASE TAKE NOTICE that on May 29, 2019 at 2:00 p.m. before the Honorable William H. Orrick in Courtroom 2 on the 17th floor of the above-entitled court located at 450 Golden Gate Avenue, San Francisco, CA 94102-3489, RABAB ABDULHADI, Ph.D. (hereinafter “Dr. Abdulhadi”) will and hereby does move for an order awarding sanctions pursuant to 28 U.S.C. § 1927 and this Court’s “inherent authority” against Attorneys, ROBB C. ADKINS, KRISTA M. ENNS, SETH WEISBURST, STEFFEN N. JOHNSON, LOWELL D. JACOBSON, ADRIANNE ROSENBLUTH, LAWRENCE M. HILL, ALEXA PERLMAN, BROOKE GOLDSTEIN AND AMANDA BERMAN (hereinafter collectively “Plaintiffs’ Counsel”) for unreasonably and vexatiously multiplying litigation proceedings. This motion is based upon this Notice and Memorandum of Points and Authorities; the Declarations of Mark Kleiman, Dan Siegel, and Colleen Flynn in support of this motion, the pleadings on file with the Court; and such authorities and argument as may be presented in any opposition or reply at or before the hearing and at the hearing of this Motion.

RELIEF SOUGHT

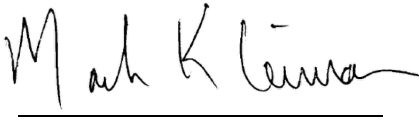
Dr. Abdulhadi respectfully requests that this Court award sanctions against Plaintiffs in the amount of \$428,890.76 for Dr. Abdulhadi’s costs and attorneys’ fees in defending against Plaintiffs’ multiple complaints in this matter.

**DEFENDANT, RABAB ABDULHADI’S MOTION FOR SANCTIONS PURSUANT TO 28 U.S.C. § 1927
AND THE COURT’S “INHERENT AUTHORITY”; DECLARATIONS OF MARK KLEIMAN,
DAN SIEGEL AND COLLEEN FLYNN IN SUPPORT**

1 DATED: April 19, 2019

RESPECTFULLY SUBMITTED

2 **LAW OFFICE OF MARK ALLEN KLEIMAN**

3
4
5 By: 

6 Mark Allen Kleiman, Esq.

7
8 **LAW OFFICES OF BEN GHARAGOZLI**

9 Ben Gharagozli, Esq.

10 Attorneys for Dr. Abdulhadi

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**DEFENDANT, RABAB ABDULHADI'S MOTION FOR SANCTIONS PURSUANT TO 28 U.S.C. § 1927
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Since June 19, 2017, Plaintiffs' Counsel has, pursuant to its self-proclaimed, goal, sought to inflict "massive punishments" against Dr. Abdulhadi¹ for her research and advocacy for justice for and in Palestine. Indeed, two attorneys of Plaintiffs' legal team, Brooke Goldstein and Amanda Berman, are members of an organization called the Lawfare Project (hereinafter "Lawfare").² Brooke Goldstein has further noted that Lawfare's "goal is to make the enemy pay."³ That enemy, are individuals, such as Dr. Abdulhadi, who dare to advocate for justice for and in Palestine.⁴

With such goals in mind, Lawfare partnered with a number of experienced attorneys at Winston & Strawn, LLP to bring three baseless complaints against Dr. Abdulhadi. While the complaints targeted San Francisco State University (hereinafter "SFSU"), the only faculty member in the lawsuits was Dr. Abdulhadi.

Dr. Abdulhadi, earning an academic's salary, has been unable to pay for the \$428,890.76 of attorneys' fees and costs in fending off these malicious attacks. Although

¹ Speech by plaintiffs' counsel, Brooke Goldstein: "The goal is...to send a message, a deterrent message, that similar actions such as those that they engage in will result in massive punishments." <https://www.youtube.com/watch?v=iSm22DhzC6k> at 30:47-30:56 in the video. Last accessed April 18, 2019.

² Ironically, Lawfare, as it's Executive Director, Brooke Goldstein boasts, is characterized by "frivolous...lawsuits brought against authors...who are brave enough to speak publicly about, or satirically on, issues of national security and public concern." <https://www.thelawfareproject.org/analysis/2018/4/26/opening-remarks-brooke-goldstein> Last accessed April 18, 2019.

³ <https://www.youtube.com/watch?v=iSm22DhzC6k> at 30:42. Last accessed April 18, 2019.

⁴ "I want to quickly just talk about SFSU and UCI because I am sure you all heard what happened to the Mayor of Jerusalem Nir Barkat. It is absolutely essential that we empower the students to assert their civil rights. Lawyers groups are helpless. If we don't have a plaintiff, I can't do anything." <https://www.youtube.com/watch?v=iSm22DhzC6k> 43:16 - 43:34. Last accessed April 19, 2019.

1 most members of Plaintiff' Counsel's team continued to earn Big Law salaries while
 2 persecuting an academic because of her political speech, Mr. Mark Kleiman, Mr. Ben
 3 Gharagozli, Mr. Siegel and Ms. Flynn earned nothing in this matter as they worked pro
 4 bono in defending Dr. Abdulhadi from Plaintiffs' Counsel's baseless crusade.

5 Thinly disguised as civil rights lawsuits, the three complaints filed in this action
 6 lacked any level of merit especially against Dr. Abdulhadi. Rather than realize that their
 7 claims lacked merit, Plaintiffs' Counsel persisted in prosecuting their baseless suits.

8 Plaintiffs' Counsel's three separate complaints did not meaningfully differ from
 9 one another as to allegations against Dr. Abdulhadi. Despite receiving detailed guidance
 10 from the Court as to the defects of their First Amended Complaint (hereinafter "FAC"),
 11 Plaintiffs' Counsel came no closer to the legal standard in their SAC than they did in their
 12 FAC. Ultimately, the Court dismissed Plaintiffs' SAC without leave to amend on
 13 October 29, 2018.

14 What is more, Mr. Seth Weisburst, materially misrepresented the allegations of the
 15 Second Amended Complaint (hereinafter "SAC") in open court during the August 8,
 16 2018 oral arguments on Dr. Abdulhadi's motion to dismiss. Specifically, Mr. Weisburst
 17 claimed that the SAC alleged that Dr. Abdulhadi "was supervising" students (Dkt. No.
 18 117, 16:3, August 8, 2018.) In reality, the SAC alleged no such thing. In effect, Mr.
 19 Weisburst attempted to circumvent his Rule 11 obligations simply because, as Plaintiffs'
 20 Counsel well knew, there was no factual or evidentiary basis upon which they could
 21 allege in their pleadings that Dr. Abdulhadi supervised the students in any of the alleged
 22 misconduct.

23 24 **II. STATEMENT OF ISSUES TO BE DECIDED**

25 Whether the Court, pursuant to 28 USC section 1927 or the Court's inherent
 26 authority, should sanction Plaintiffs' Counsel for their unreasonable and vexatious
 27 multiplication of the proceedings in this matter when
 28

(a) their three (3) complaints did not materially differ from one another as to allegations against Dr. Abdulhadi

(b) one member of Plaintiffs' Counsel, Mr. Weisburst, made material misrepresentations in open court; and

(c) another member of Plaintiffs' Counsel, Ms. Goldstein, declared an intention to improperly use the legal system to inflict "massive punishments" upon individuals like Dr. Abdulhadi for their political advocacy.

III. SUCCINCT STATEMENT OF THE RELEVANT FACTS

A) The Court Dismissed Plaintiffs' Counsel's FAC and Warned Them of its "total lack of facts".

After amending their original lawsuit, the Court heard arguments on Dr. Abdulhadi's motion to dismiss on November 8, 2017. During that hearing and again on March 9, 2018 in a thirty-eight (38) page order, the Court thoroughly catalogued the defects of Plaintiffs' Counsel's FAC. (Dkt. No. 124, at pp. 2, 35-37.) Indeed, the Court's order dismissing Plaintiffs' FAC admonished Plaintiffs' Counsel that it was only "[o]ut of an abundance of caution" that they would be allowed to amend allegations against Dr. Abdulhadi. (Dkt. No. 124, at p. 37). The Court warned Plaintiffs' Counsel that their allegations against Dr. Abdulhadi were "stretched." (Dkt. No. 124, at p. 37, fn. 17.) To ensure there was no doubt about the FAC's failings, the Court observed that the FAC suffered from a "total lack of facts" supporting the claims against Dr. Abdulhadi. (Dkt. No. 124, at p. 37).

B) The Court Dismissed Plaintiffs' Counsel's SAC on Essentially the Same Grounds as the Court Dismissed Plaintiffs' Counsel's FAC.

At the very least, Plaintiffs' Counsel, with all of the resources and experience of a reputable Mega-Firm, could have and should have heeded the Court's detailed March 9, 2018 order. Plaintiffs' Counsel should have either fixed the deficiencies or realized that

they could not fix these deficiencies and at least drop Dr. Abdulhadi from the suit. Instead, Plaintiffs' Counsel submitted a SAC that came no closer to the legal standards than did their FAC.

i) Mr. Weisburst's Misrepresentations in Open Court.

On August 8, 2018, the Court heard arguments on Dr. Abdulhadi's motion to dismiss Plaintiffs' SAC. During that hearing, Mr. Weisburst misrepresented the SAC's allegations as to Dr. Abdulhadi in a self-serving manner. Namely, Mr. Weisburst falsely claimed as follows:

"[Dr. Abdulhadi] directed the students that she was supervising that she is - - she is their professor, she is there (sic) advisor she is in a position of authority. She directed them to make sure this event didn't happen. We allege it." (Dkt. No. 117, 16:3, August 8, 2018.) (emphasis added)

In fact, there is no allegation in the SAC that Dr. Abdulhadi was supervising anybody. Such a misrepresentation was significant because an allegation of supervision is required for supervisory liability. See e.g. OSU Student Alliance v. Ray, 699, F.3d 1053 (9th Cir. 2012).

What makes Mr. Weisburst's misrepresentation in this regard particularly inexcusable is that this very issue was briefed in Dr. Abdulhadi's Reply Brief Dkt. No. 155, pp. 6-7. In fact, this section had its own entry on the Reply Brief's table of contents: **"Plaintiffs Cannot Make Up Facts About Supervision That Are Not in the SAC and Argue These 'Alternative Facts' in Their Opposition."** Dkt. No. 155, at p. 2. As a careful lawyer, Mr. Weisburst doubtless reviewed Plaintiffs' SAC and Dr. Abdulhadi's Reply Brief in preparing for the August 8, 2018 hearing.

ii) Plaintiffs' Counsel's SAC Was Just as Groundless as Their FAC.

Subsequently, the Court, on October 29, 2018, issued a forty-one (41) page written order, which dismissed Plaintiffs' lawsuit without leave to amend Dkt. No. 167. In that

order, the Court made several observations indicating that the SAC came no closer to the legal standard as the FAC did with respect to claims against Dr. Abdulhadi:

(a) “*As before*, plaintiffs’ conjecture does not support ‘reasonable inferences’ and cannot put Abdulhadi on the hook for personal liability for the conduct of individuals who plaintiffs admit were the direct cause of their injuries.” Dkt. No. 167 at 30:23-25.

(emphasis added)

(b) “Plaintiffs, *again*, complain that their lack of facts plausibly supporting the claim that Abdulhadi took direct action (or knowing inaction) with respect to the students’ conduct during the Barkat event or KYR Fair is due to those facts being within Abdulhadi’s possession. That, *again*, ignores that there have been investigations into those events (conducted or initiated by SFSU or CSU) and reports issued that plaintiffs themselves repeatedly cite as support for their factual assertions.”

Dkt. No. 167 at 30:23-25

It is also important to compare the Court’s March 9, 2018 order with the Court’s October 29, 2018 order (as to Plaintiffs’ allegations against Dr. Abdulhadi) to reveal that Plaintiffs’ Counsel, despite detailed guidance from the Court, failed to come any closer to the legal standard in their SAC that they did in their FAC. As to the FAC, the Court noted that “Plaintiffs, at most attempt to build a bridge between Abdulhadi’s alleged anti-Zionist and anti-Israel stances, her pro-Palestinian resistance support, and her academic pursuits to support an inference that she must have encouraged GUPS or others to engage in the acts of discrimination complained of.” Dkt. No. 124, at pp. 36:24-37:3.

The Court essentially had the same criticism of Plaintiffs’ SAC: “But more significantly, the only facts plaintiffs have alleged are: Abdulhadi subscribes to anti-Zionist and anti-normalization policies; Abdulhadi is a faculty member of COES and

1 AMED and COES and AMED have sponsored anti-Zionist events at SFSU; Abdulhadi is
 2 the faculty adviser to GUPS; and Abdulhadi has a mentee relationship with some of the
 3 students who disrupted the Barkat event and excluded Hillel. These allegations do not,
 4 contrary to plaintiffs' assertion, plausibly **or even reasonably** suggest Abdulhadi directed
 5 or caused the injuries to the plaintiffs." (emphasis added) Dkt. No. 167, at 31:13-19.

6 Finally, the Court observed in its order dismissing the SAC, that even the SAC's
 7 single "helpful clarification" was actually an attempt to circumvent the Court's prior
 8 ruling that if Dr. Abdulhadi could be sued at all, it could only be in her individual
 9 capacity. Dkt. No. 167, at pp. 29-30.

10 11 **IV. LEGAL STANDARD**

12 The Court is empowered to impose sanctions where an attorney "multiplies the
 13 proceedings in any case unreasonably and vexatiously." 28 U.S.C. § 1927. Such
 14 sanctions include excess costs, expenses and attorneys' fees reasonably incurred because
 15 of such conduct. Id. To impose sanctions under Section 1927, there must be a showing
 16 of subjective bad faith on the part of the attorney. Salstrom v. Citicorp Credit Servs, Inc.
 17 74 F.3d 183, 184 (9th Cir. 1995). "Bad faith is present when an attorney knowingly or
 18 recklessly raises a frivolous argument, **or argues a meritorious claim for the purpose**
 19 **of harassing an opponent.**" In re Keegan Mgmt. Co. Sec. Litig. 78 F.3d 431, 436 (9th
 20 Cir. 1996). (emphasis added).

21 Additionally, the Court may issue sanctions under its inherent power. B.K.B. v.
 22 Maui Police Dep't, 276 F.3d 1091, 1107-08 (9th Cir. 2002). "[C]ourts of justice are
 23 universally acknowledged to be vested, by their very creation, with power to impose
 24 silence, respect, and decorum in their presence, and submission to their lawful mandates.
 25 Id. (quoting Chambers v. NASCO, Inc. 501 U.S. 32, 43 (1991)). Indeed, "recklessness
 26 when combined with an additional factor such as frivolousness, harassment, or an
 27 improper purpose" is sanctionable. Fink v. Gomez, 239 F.3d 989, 994 (9th Cir. 2001).

1 A moving party need not prove that the lawsuit was completely frivolous. Fink,
 2 239 F.3d at 992. Even where a lawsuit does not suffer from a “total lack of facts” as did
 3 Plaintiffs’ Counsel’s, sanctions are still appropriate if the attorney(s) in question were
 4 “substantially motivated by vindictiveness, obduracy, or mala fides.” Id. Indeed, “the
 5 assertion of a colorable claim will not bar the assessment of attorney’s fees.” Id.

7 **V. ARGUMENT**

8 **A) Plaintiffs’ Counsel’s Conduct Is Sanctionable.**

9 In filing three different complaints that did not substantively come any closer to
 10 the requisite legal standard, Plaintiffs’ Counsel’s conduct demonstrates bad faith. Indeed,
 11 Courts have granted sanctions where a party filed amended pleadings that did not differ
 12 from pleadings previously determined insufficient. See Wages v. I.R.S., 915 F.2d 1230,
 13 1235 (9th Cir. 1990).

14 In preparing the SAC, Plaintiffs’ Counsel refused to follow the Court’s patient and
 15 specific directions as evidenced by the Court’s ruling dismissing the SAC. What is more,
 16 Plaintiffs’ lead attorney, Mr. Weisburst, misrepresented the allegations in the SAC in
 17 open court on August 8, 2018 in an attempt to salvage Plaintiffs’ third deficient
 18 complaint against Dr. Abdulhadi. Had the proceedings continued, Dr. Abdulhadi would
 19 have incurred tens of thousands of dollars in attorneys’ fees and costs in defending
 20 herself from discovery requests that would have in all likelihood been overbroad and
 21 unreasonably intrusive. This contention is supported by Ms. Brooke Goldstein, a
 22 member of Plaintiffs’ Counsel, openly declaring the inappropriate intentions behind
 23 lawsuits such as these.

24 Plaintiffs’ Counsel have no excuse for their conduct. They have tremendous
 25 resources that would have and should have allowed a good faith inquiry as to the viability
 26 of Plaintiffs’ claims in this action. Indeed, Winston & Strawn, LLP is a firm of nearly
 27 1,000 lawyers and an impressive support staff. This fact, coupled with Ms. Goldstein’s
 28

pre-litigation comments and that the three complaints did not materially differ from one another despite the Court's thirty-eight (38) page March 9, 2018 order unavoidably results in a finding that Plaintiffs' Counsel acted in bad faith in the present litigation. None of the aforementioned facts should be considered in a vacuum. Indeed, a Court may consider a combination of factors in awarding sanctions. See Salstrom v. Citicorp Credit Servs., Inc., 74 F.3d 183, 185 (9th Cir. 1996).

The conclusion is nearly unavoidable that the link between Lawfare's malice and Winston & Strawn's obduracy - lies somewhere near Mr. Lawrence M. Hill. Mr. Hill is both a partner at Winston & Strawn, LLP and the Chairman of Lawfare's Board of Directors. He has been practicing law since 1984, is the chair of the firm's federal controversy practice and has ample experience litigating complex federal matters. Mr. Hill is also a former Special Assistant United States Attorney who has two Special Achievement Awards for his trial work. To say that Mr. Hill is an experienced litigator who should have known better is an understatement.

Other members of Plaintiffs' Counsel carry impressive complex federal litigation experience that includes supervising large teams of attorneys. Robb C. Adkins, for example, served as the Chief of the U.S. Attorney's Office in Orange County where he supervised an office of more than 40 trial attorneys and staff.

With this level of skill, experience and resources, Plaintiffs' Counsel cannot reasonably claim that they were negligent, rather than reckless in this matter. Lawfare's self-proclaimed announcement of its aim to misuse the legal process to inflict "massive punishments" on individuals like Dr. Abdulhadi meets the improper purpose requirement for sanctionable conduct.

B) Dr. Abdulhadi's Attorneys Pro Bono Work Does Not Bar Relief.

Attorneys' fees are recoverable by pro bono attorneys to the same extent that they are recoverable by attorneys who charge for their services. Legal Voice v. Stormans Inc., 757 F.3d 1015, 1017 (9th Cir. 2014) referring to Blanchard v. Bergeron, 489 U.S. 87, 94,

(1989) (“[W]here there are lawyers or organizations that will take a plaintiff’s case without compensation, that fact does not bar the award of a reasonable fee.”).

Accordingly, that Dr. Abdulhadi’s lawyers, Mark Kleiman, Ben Gharagozli worked pro bono in defending her against Plaintiffs’ Counsel’s crusade creates no bar for Dr. Abdulhadi seeking sanctions in the form of fees and costs pursuant to 28 USC § 1927 and the Court’s “inherent authority.” This standard similarly applies to Dan Siegel, who prepared an amicus brief in support of Dr. Abdulhadi and Coleen Flynn who has fifteen years’ experience litigating §1983 and related civil rights cases.

V. CONCLUSION

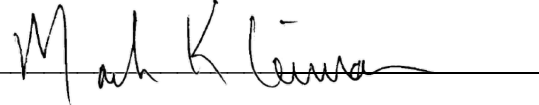
Plaintiffs’ Counsel filed multiple deficient pleadings despite the Court identifying to them the specific defects, confessed their nefarious intentions of bringing such lawsuits (e.g. to harass individuals like Dr. Abdulhadi who advocate for justice for and in Palestine) and made material misrepresentations in open court to save their defective suit. This, despite having the resources and experience to determine that their claims lacked merit as well as detailed guidance from the Court as to how to fix their pleadings if they indeed have the requisite factual allegations and evidence to do so.

Therefore, pursuant to 28 USC §1927 and this Court’s “inherent authority,” Dr. Abdulhadi respectfully requests that the Court grant this Motion for Sanctions in the amount of \$428,890.76 to cover Dr. Abdulhadi’s costs and attorneys’ fees in defending against Plaintiffs’ Counsel’s multiple defective pleadings that were, as Ms. Goldstein proudly declared, intended to inflict “massive punishments” against Dr. Abdulhadi.

RESPECTFULLY SUBMITTED

DATED: April 19, 2019

LAW OFFICE OF MARK ALLEN KLEIMAN

By: 

Mark Allen Kleiman, Esq.

LAW OFFICES OF BEN GHARAGOZLI

Ben Gharagozli, Esq.

Attorneys for Dr. Abdulhadi

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